

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
3 **SACRAMENTO DIVISION**

4 SIERRA NEVADA FOREST)
5 PROTECTION CAMPAIGN, SIERRA)
6 CLUB, and LASSEN FOREST)
7 PRESERVATION GROUP,)
8 Plaintiffs,)
9 v.)
10 BERNARD WEINGARDT, in his)
11 official capacity as Deputy Regional)
12 Forester; UNITED STATES FOREST)
13 SERVICE; and UNITED STATES)
14 DEPARTMENT OF AGRICULTURE,)
15 Defendants.)

Case No. 04-cv-02727 DFL DAD

**STIPULATION REGARDING
AMOUNT OF ATTORNEY'S
FEES AND COSTS CLAIMED
AND [PROPOSED] ORDER**

16 This Stipulation is entered into by and between Plaintiffs Sierra Nevada Forest Protection
17 Campaign, Sierra Club, and Lassen Forest Preservation Group ("Plaintiffs"), and Defendants
18 Bernard Weingardt, United States Forest Service, and United States Department of Agriculture
19 ("Federal Defendants").

20 RECITALS

21 WHEREAS, on June 30, 2005, this Court entered Summary Judgment in favor of
22 Plaintiffs and against Federal Defendants; and

23 WHEREAS, on September 12, 2005, the parties initiated good faith negotiations in
24 furtherance of their common interest to resolve amicably the amount of potential recoverable
25 attorney's fees and costs subject to the Equal Access to Justice Act ("EAJA"), § 2414(d).

26 NOW, THEREFORE, this Stipulation is entered for the sole purpose of resolving, and
27 without need for further litigation, Plaintiffs' claim for an award of all attorney fees and costs
28 associated with this case. Accordingly, the parties mutually stipulate as follows:

STIPULATION REGARDING
ATTORNEY'S FEES AND COSTS

STIPULATION

1
2 1. Plaintiffs agree to reduce and limit any and all claims for such fees and/or costs to
3 fifty seven thousand, two hundred and sixty six dollars and fifty nine cents (\$57,266.59), and
4 Federal Defendants agree not to dispute that Plaintiffs incurred fifty seven thousand, two hundred
5 and sixty six dollars and fifty nine cents (\$57,266.59) in recoverable attorney's fees and costs.

6 2. Federal Defendants agree to pay fifty seven thousand, two hundred and sixty six
7 dollars and fifty nine cents (\$57,266.59) in attorney's fees and costs to Plaintiffs within a
8 reasonable time frame, given the impact of hurricane Katrina on the National Finance Center, of
9 the Court's approval of this Stipulation. Federal Defendants agree to submit all necessary
10 paperwork to the appropriate department or agency within ten (10) business days of receipt of the
11 signed court order approving this Stipulation.

12 3. In consideration of Federal Defendants' agreement to pay the amount specified in
13 paragraph 2, Plaintiffs, their successor, affiliates, and assigns shall not sue the United States, and
14 shall release all claims and causes of action against the United States, based on any Federal, State
15 or common law to recover any costs, fees or expenses of this case. Plaintiffs further agree not to
16 take any further steps to obtain a judgment for or payment of litigation costs or expenses,
17 including the filing of a motion for attorney's fees, in this case in the United States District
18 Court.

19 4. Upon execution of this Stipulation, the parties agree to file the Stipulation with
20 the Court. Either party may seek relief from the Court to enforce any provisions of this
21 Stipulation.

22 5. Except as provided herein, nothing in this Stipulation shall be (1) construed as or
23 deemed a waiver of any defenses or arguments the Federal Defendants may have with respect to
24 claims in this action; (2) offered in evidence in any proceeding as an admission or concession of
25 wrongdoing, liability, or any issue of fact or law concerning the claims or defenses in this action;
26 or (3) construed as or deemed precedent in any other proceeding. Nothing in this Stipulation

27 STIPULATION REGARDING
28 ATTORNEY'S FEES AND COSTS

shall be interpreted as, or shall constitute, a commitment or requirement that Federal Defendants obligate or pay funds, or take any other action in contravention of the Anti Deficiency Act, 31 U.S.C. § 1341, or any other applicable law.

6. Nothing in this Stipulation shall be construed as an admission that the position of the Federal Defendants in this case was not substantially justified.

7. This Stipulation represent the entirety of the Parties' commitments with regard to settlement.

ACCORDINGLY, the United States and Plaintiffs, by their duly authorized attorneys, whose signatures appear below, have executed this agreement.

KELLY A. JOHNSON
Acting Assistant Attorney General

Dated: September 28, 2005

/s/ Julia Jones
JULIA A. JONES (D.C. Bar # 469713)
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
Attorney for Federal Defendants.

Dated: September 28, 2005

/s/ David Edelson
David B. Edelson
840 Grizzly Peak Blvd.
Berkeley, CA 94708
Attorney for Plaintiffs

Dated: September 28, 2005

/s/ Michael Graf
Michael W. Graf
Law Offices
227 Behrens St.
El Cerrito, CA 94530
Attorney for Plaintiffs

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Pursuant to this Stipulation, IT IS SO ORDERED.

Date: 09/28/2005

/s/ David F. Levi
Honorable David F. Levi

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